Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

REPLY COMMENTS OF BROADVIEW NETWORKS, NUVOX COMMUNICATIONS, ONE COMMUNICATIONS CORP., AND XO COMMUNICATIONS ON THE "PHANTOM TRAFFIC" PROPOSAL OF THE MISSOULA PLAN SUPPORTERS

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Broadview Networks, NuVox Communications, One Communications Corp., and XO Communications, LLC (collectively, the "Joint CLEC Commenters"), hereby file their reply to the initial comments submitted in this docket on the November 6, 2006, proposal of the supporters of the Missoula Plan to address so-called "phantom traffic" (the "Proposal").

INTRODUCTION AND SUMMARY

The record reveals an absence of any consensus on the extent and nature of any "phantom traffic" problem that might exist today. The Proposal itself was starkly mute on the size and precise nature of the alleged problem. Consequently, and not surprisingly, the initial comments fail to lend substantial or credible support for the adoption of the Proposal in either its original or any modified form. It is particularly noteworthy that the initial comments that professed support for the Proposal proffered no evidence of a "phantom traffic" problem warranting the extensive regulatory intervention urged by the Proposal. The proponents simply assumed so. When mere assumptions about the nature and extent of the problem are offered as the foundation for

imposing substantially new and very costly[1] regulatory requirements (both interim[2] and permanent), the Commission can only respond by resoundingly rejecting the Proposal as "regulatory overkill." Rather, the Commission should adopt far more measured regulatory steps which build upon "solutions" that carriers are currently pursuing to govern the exchange of traffic that fails to contain identifying signaling information.

If there is any convergence of perspective in the comments, it is that the Commission should take two modest regulatory steps: the Commission should reiterate and strengthen its call signaling rules – particularly as they apply to CPN and ANI – and should address the question of *prospective* intercarrier compensation for voice over Internet Protocol ("VoIP") traffic. In addition the Commission should, as outlined in the Joint CLEC Commenters' initial submission, rely upon negotiated arrangements between carriers to address the question of how "phantom traffic" will be handled by the carriers directly or indirectly exchanging such traffic. Under no circumstances should the Commission adopt mandatory call detail record ("CDR") requirements. This is a matter which should be left to bilateral agreements reached between interconnecting carriers.

The Commission should give the measures advocated by the Joint CLEC Commenters sufficient time to have effect, at least 12 months. The Commission may wish to continue to

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1 Verizon, in its comments, (at 2) estimates that implementation of the Proposal would cost the industry hundreds of millions of dollars to implement.

2 The proponents' characterization of the initial rules as "interim" should not be viewed by the Commission as creating a lesser standard for adoption. First, the so-called interim rules impose substantial costs on carriers. Second, they will greatly alter current, sound business practices of carriers and arrangements between carriers. Third, they may remain in effect for many years. As such, they Commission should not feel compelled to rush to judgment or to believe it can fix any problems at a later time if it adopts final rules.

monitor the situation and can seek comment at a future time to understand whether there are any remaining issues and, if necessary, address them in a focused fashion.

A. The Proposal's Supporters Have Failed to Quantify the Magnitude of the Alleged Problem or Even to Define "Phantom Traffic"

In their initial comments, the Joint CLEC Commenters explained how many carriers are "taking the bull by the horns" and addressing the exchange of "phantom traffic" without regulatory intervention.[3] The initial comments further demonstrate the acceptability and efficacy of these methods. Principally, carriers first determine whether sufficient traffic is being exchanged – and if so, whether traffic is sufficiently out of balance – in order to justify entering into a formal arrangement governing the exchange of traffic and compensation therefor. Where carriers do enter into an agreement, traffic that is exchanged without calling party number ("CPN") information, or other signaling data needed to identify the origin and jurisdiction of the traffic, the parties typically employ surrogates, such as jurisdictional factors, to govern compensation rates. The number of parties supporting the continued use of these methods counsels against the adoption of a burdensome regulatory framework such as the Proposal that would supplant current approaches rather than complement them.

As explained in their initial comments, the Joint CLEC Commenters support steps to require carriers to negotiate with directly or indirectly interconnected carriers, but only *upon request.*[4] The Commission should not mandate agreements, as some interconnected carriers may

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3 In these reply comments, the Joint CLEC Commenters refer to traffic that is delivered to a downstream carrier without calling party number ("CPN") as "phantom traffic," except where referring to other carriers' use of the term, which should be evident from the context. "Phantom traffic" often will not have information necessary to identify the originating or other upstream carriers, but this condition often also applies to traffic that is delivered *with CPN* when there is one or more intermediate carriers.

4 Initial Joint CLEC Comments at 18.

agree (perhaps tacitly) that formal contracts are not cost-justified and therefore may exchange traffic on a bill-and-keep basis. Those carriers that desire compensation arrangements should be obligated to request negotiations with another carrier and subject themselves to the standards of Section 251(b)(5) and 251(c)(2), even if they are rural ILECs.[5] As Sprint Nextel notes, if rural ILECs want to impose 251(b) and (c)-like obligations on CLECs and wireless carriers, they should expect to give up the protections of their Section 251(f) exemptions.[6]

As a prerequisite to the Commission even considering whether to replace the current *de facto* framework based upon negotiations, supporters of the Proposal should be required to demonstrate persuasively the need for greater regulatory requirements. They have failed to do so, not once or twice, but four times just in the past half year. Although advocating a partial "solution" to the "phantom traffic problem" both when the comprehensive Missoula Plan was submitted in July, 2006, and when filing the more detailed Proposal on November 6, 2006, the Proposal's supporters have never substantiated the magnitude of the alleged problem. The supporters also missed two other opportunities in the comment cycles established by the Commission to develop a record on the Plan and the Proposal. Surely, if such evidence exists, the proponents would have produced it by now. Consequently, the Commission can only

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5 *Accord* Comments of Verizon Wireless at 10-11 (compensation obligations should not exist absent a *bona fide* request for negotiation). Where a carrier requests negotiations for intercarrier compensation and the exchange of traffic with a rural ILEC otherwise exempt from the requirements of Section 251(b) and (c) pursuant to Section 251(f) of the Act, the rural ILEC should be able to choose whether to accept negotiations and subject itself to the obligations of Section 251(b) and (c) or whether to defend its exemption and, if successful, exchange traffic without an intercarrier compensation arrangement. The Commission should reject that portion of the Proposal that would allow a carrier to force compensation obligations on another without requesting negotiations and entering into an agreement.

6 Comments of Sprint Nextel at 3, 13-14.

conclude that any problem is *not* sufficiently troublesome to merit a comprehensive "solution" burdening the entire industry.

Indeed, the supporters and supportive commenters fail to even quantify the amount of traffic exchanged which falls into the category of "phantom traffic."[7] As such, this is a case of the tail trying to wag the dog. Verizon suggests that, for that carrier, approximately 20% of the traffic exchanged does not have CPN.[8] As an initial matter, there is no way to know if this number *a priori* can be extrapolated across the industry.[9] Even more importantly, Verizon takes pains to underscore that this number cannot be used to size any "phantom traffic" problem that might warrant a regulatory fix. For one thing, there are technical reasons why some unidentified amount of traffic will not have CPN or other identifying information.[10] The Proposal (albeit through regulations rather than negotiated arrangements) treats this subset of traffic no differently from what generally is being done today – using factors in contractual arrangements to put this traffic in one jurisdictional and rate basket or another. Further, regardless of the

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7 At least one supporting commenter attempted to provide evidence defining the size and scope of the problem. John Staurlakis, Inc., a consulting firm working with rate-of-return ILECs, discusses the problem as being "sizeable" and "significant" and that by working with one tandem provider, it "reduced the size of the problem to less than 20 percent" (at 2-3). These data, however, reflect only the frequency of calls that lack certain call detail, rather than a failure by the terminating carrier to receive appropriate payment. As indicated elsewhere in these reply comments, carriers either through negotiation or other means have arrived at mechanisms to receive payment without call detail records or without accurate call detail records. In addition, the Staurlakis data indicate nothing about the source of the problem. As such, they have little probative value.

8 *See* Ex Parte letter dated November 1, 2006 from Donna Epps, Vice President-Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 11; Comments of Verizon at 7.

9 *See* Comments of TEXALTEL at 3.

10 *See* Comments of Verizon at 30; Comments of Feature Group IP at 6-7 (explaining why CPN may not be present due to equipment or system deficiencies or the introduction of new technologies); Comments of TEXALTEL at 3.

reason a certain volume of traffic lacks CPN, where contractual arrangements are in place to provide intercarrier treatment of such traffic, its existence does not present a continuing issue.

Further compounding the failure of the proponents to quantify the size of the alleged problem, there is an inconsistency about what traffic is the source of the purported problem. As Sprint-Nextel observes, the term "phantom traffic" conflates "many related but entirely distinct issues."[11] Some commenters contend that all traffic that lacks CPN merits intervention.[12] Others would exclude traffic that lacks CPN information because of technical limitations, such as the use of MF signaling or the introduction of new technologies. One carrier singles out traffic subject to the MECAB Standards Document.[13] Yet others focus on traffic originated or carried by entities that deliberately seek to avoid intercarrier compensation.[14] Many of the disagreements regarding the treatment of traffic exchanged without CPN arise from good faith disagreements about the nature and appropriate compensation for some traffic – such as VoIP traffic.[15] The Commission cannot ascertain whether a regulatory framework should be adopted when there is no consensus in the industry regarding the identity of the traffic giving rise to the

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11 Comments of Sprint-Nextel at 5.

12 Comments of the Western Telecommunications Alliance at 1.

13 Comments of Frontier Communications at 2.

14 *E.g.*, Comments of the Rural Iowa Independent Telephone Association at 1("originating and transiting carriers that deliberately obscure the identity of the of the originator of the call create this problem"); Comments of NECA *et al.* at 6-7. There is no doubt though, that the scope of traffic affected by the Proposal is extremely large, encompassing all "traffic involving more than two carriers in a call path." Proposal, § III(A).

15 *See, e.g.,* Comments of Sprint Nextel at 2, 5-6 ("phantom traffic," as described by the proposal is largely the result of technical limitations within the existing network and legal disputes over the proper rating and routing of traffic).

supposed problem.[16] Otherwise, no cost benefit analysis of imposing new regulations can be undertaken. Without understanding the nature of the problem, the Commission likely will do more harm than good by moving substantially beyond current methods used by carriers to handle traffic exchanged without CPN. [17] However as advocated in the Joint CLEC Commenters initial submission and later in this reply, the Commission can and should take steps to bolster the existing *de facto* framework built upon negotiated agreements and the transmission of signaling information in which carriers operate. As TEXALTEL notes,

> [t]he FCC would be well advised to examine closely the business arrangements that are evolving among cooperating parties and apply those much simplified procedures to the industry, rather than applying the procedures proposed by a party who would rather not cooperate with competition if it were permitted to so choose.[18]

Significantly, the supporters of the Proposal fail not only to present a coherent picture regarding the nature and extent of the alleged problem, they fail to address why reliance on negotiated solutions is inadequate.[19] The Joint CLEC Commenters suspect that the reason is

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16 Indeed, from the Joint CLEC Commenters' experience, there is every reason to believe that the size of any problem is, as a practical matter, getting smaller as carriers become more and more experienced and sophisticated in their interconnection agreements.

17 *See* Comments of NCTA at 4-5 (explaining the lack of demonstration regarding the size of the problem or effectiveness of the proposed "solutions").

18 Comments of TEXALTEL at 2.

19 Notably, some commenters purport to support the Proposal, but note that negotiated solutions should be encouraged and honored. *See* Comments of the Minnesota Independent Coalition at 2. The Joint CLEC Commenters submit that the Commission cannot adopt the Proposal in any real sense if it is made secondary to negotiated contracts. At most, existing agreements could be honored as a transitional measure to the shackles of the Proposal, as a few commenters suggested, but this suggestion should be rejected and the primacy of intercarrier agreements affirmed through dismissal of the Proposal. Finally, the Joint CLEC Commenters do not disagree with comments by the proponents of the Proposal arguing that transiting carriers have certain responsibilities. The Joint CLEC Commenters' disagreement is with the allegation that these carriers are not acting responsibly today, with the overly regulatory and very costly approach in the

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two-fold. First, the rural ILEC supporters, which constitute the majority of the entities that filed or generally sponsor the Proposal, are concerned about entering into negotiations that might jeopardize their Section 251(f) exempt status. From the Joint CLEC Commenters' perspective, the proposed regulations would constitute an end run around the pro-negotiation framework already favored and established by the Act, by which the rural ILECs would gain through regulation the benefits of interconnection arrangements without paying the price that other ILECs pay of being subject to Sections 251(b) or (c)(2).[20] The rural ILEC carriers cannot and should not have it both ways.[21]

Second, the Proposal represents a significant and inappropriate revenues opportunity for large intermediate carriers.[22] Specifically, the Proposal (in conjunction with the Plan) would allow tandem transit providers to collect charges from either upstream or downstream carriers for generating the CDRs that the Proposal would make mandatory. These revenues, $0.0025 per CDR, would be more than double the per minute costs for providing tandem transit service as determined by a number of Commission that have examined the incremental costs of tandem transit service. As the Joint CLEC Commenters and others explained, the exorbitant tandem

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Proposal, and with the creation of any requirement that transiting carriers that pass traffic without certain call detail are automatically *financially* responsible.

20 *See* Comments of Verizon Wireless at 10-11 (rural ILECs and other carriers should not be able to force an arrangement regarding compensation for the exchange of traffic without making a *bona fide* request under the Act).

21 Further, as Sprint Nextel points out, many rural ILECs have failed to upgrade their networks to receive call signaling information, which is a large part of the reason the Proposal calls for the generation and delivery of CDRs by intermediate carriers. *See* Comments of Sprint Nextel Corporation at 8-9.

22 The Joint CLEC Commenters concur in the observations of TEXALTEL in this regard. *See* Comments of TEXALTEL at 1.

transit rate should not be supported by the unnecessary and unwanted obligation of tandem transit providers to create and deliver CDRs.[23]

Numerous commenters, most notably even those that lend support to other aspects of the Proposal, advocate making the CDR provisions of the Proposal optional if the Proposal is adopted.[24] The Joint CLEC Commenters join in the sentiment that "[c]reating more records, however, will not solve the phantom traffic problem, to the extent one exists."[25] As Verizon notes, an ubiquitous CDR generation and use requirement will not only be extremely costly for the industry to implement, but will have other adverse consequences as well, in the form of "additional confusing, double billing, and additional billing disputes."[26] The comments make clear that terminating carriers should be required to pay for CDRs *only when they request the transiting or other intermediate carrier to generate CDRs.*[27] Moreover, several commenters concur with the Joint CLEC Commenters that *originating* or *upstream carriers* should not, in any event, have to pay for CDRs.[28] The better course is simply to avoid adoption of a regulatory

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23 Even proponents of the Proposal find the tandem transit record charge levels exorbitant. *See* Comments of the Minnesota Independent Coalition at 4.

24 *See, e.g.,* Comments of T-Mobile at 8; Comments of the Minnesota Independent Coalition at 3.

25 Comments of Integra Telecom at 5; *see also* Comments of Verizon at 11-13 (CDR aspect of Proposal will cause more problems than it could ever solve).

26 Comments of Verizon at 12. *See also id.* at 17 (estimating implementation costs for *Verizon Alone* of $250 million).

27 *See* Comments of Frontier Communications at 2-3 (CDR charges appropriate only when the terminating carrier requests the records – terminating carriers may have more economical ways to deal with phantom traffic). T-Mobile supports the CDR requirements because it will benefit the carrier when terminating traffic, but without adequate justification maintains that it should not have to pay for the privilege. Comments of T-Mobile at 7-8.

28 *E.g.*, Comments of Sprint Nextel Corporation at 9.

requirement regarding CDRs altogether. If interconnected carriers come to an agreement that the generation of CDRs by one or both of the carriers would be of benefit to them, they can include provisions for such CDRs in their negotiated arrangements. The Joint CLEC Commenters strongly urge the Commission to reject the Proposal.[29]

B. The Initial Comments Present a Broad Consensus That Call Signaling Rules Should Be Strengthened

Although support for the proposal is sporadic, at best, a consensus does emerge in the comments for the reiteration and strengthening of the call signaling rules.[30] The Joint CLEC Commenters' and other commenters support the adoption of regulation that require carriers using SS7 signaling to populate the CPN field and forbid them from modifying or removing the CPN parameter for traffic received from upstream carriers.[31] Carriers using MF signaling should be required to provide ANI in lieu of CPN, due to their technical limitations in using CPN.[32] The

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29 In the event the Commission adopts some variation of the Proposal – which it should not – the Commission should not require carriers to accept for and pay for CDRs generated by intermediate carriers unless the would-be-paying carriers requests the CDRs.

30 *See, e.g.,* Comments of Integra Telecom at 4 (the problem is not a shortage of records but a shortage of properly populated data fields in the signaling information); Comments of Cavalier *et al.* at 21-23; Comments of the VON Coalition at 6-7; Comments of United States Cellular Corporation at 3.

31 *See, e.g.,* Comments of GCI at 4-5.

32 *See* Comments of Cavalier *et al.* at 22. Some commenters support the imposition of similar requirements regarding the charge number field (*see, e.g.,* Comments of the VON Coalition at 7) , but this presents a more complex question because there may be legitimate and benevolent reasons, consistent with accepted industry practice and/or standards, for an intermediate carrier to populate the charge number field or even substitute it. *See, e.g.,* Comments of Cavalier *et al.* at 23 (the Commission should not address what number a carrier should use in the CN field for its customer that is not a carrier); Comments of T-Mobile USA at 15 (there should be an exception to the call signaling rules for "situations in which industry practices require intermediate carriers to change signaling information received from other carriers."). Carriers should not be allowed to alter or depopulate the charge number field out of an attempt to evade or reduce intercarrier compensation, but the regulatory obligations regarding CPN should be

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Commission should also make clear that the Jurisdictional Indicator Parameter ("JIP"), Operating Company Number ("OCN"), and Carrier Identification Code ("CIC") fields, if populated, should be passed unaltered as well.[33] As Verizon Wireless notes, modest signaling rules, if properly enforced, will allow terminating carriers to identify the carrier originating traffic. Specifically, the CPN, trunk group ID associated with the originating carrier (in particular the OCN), tandem billing records, and, if present, the JIP sufficiently support such determinations.[34]

The Commission should reject, for several reasons, suggestions to allow downstream carriers simply to block traffic without CPN or other originating line call signaling information or, alternatively, to send messages to calling parties alerting the end users that the call will be blocked because the carrier selected by the end user apparently is violating requirements regarding call signaling.[35] First, as noted above and in a number of comments, there may be innocent and currently insurmountable technical reasons why traffic does not include CPN or other originating line information. Second, the absence of such information is precisely what has been and should continue to be handled through contractual arrangements. Third, regulatory penalties for violation of the call signaling rules the Commission adopts should be stringently

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sufficient to ensure that any appropriate changes in the charge number parameter do not prevent proper billing for the exchange of switched traffic.

33 *See, e.g.,* Comments of Cavalier *et al.* at 22-23.

34 Comments of Verizon Wireless at 3. The Joint CLEC Commenters acknowledge the concerns of several wireless carriers about the use of CPN to determine jurisdiction for wireless traffic. Additional guidance from the Commission regarding the treatment of wireless traffic for intercarrier compensation purposes might be warranted, as these commenters suggest, but such matters ultimately should be resolved in the comprehensive intercarrier contract framework not in response to the Proposal.

35 *See* Comments of the Rural Iowa Independent Telephone Association at 2-3.

applied and enforced. This is a better response to any violation rather than allowing carriers to send messages to subscribers of their competitors or to block traffic originated by their rivals' end users.[36] In fact, in strengthening the call signaling rules, the Commission should adopt regulations making clear that such tactics may not be employed by downstream carriers.

C. Adoption of the Proposal Would Pre-Judge a Number of Issues Being Considered Elsewhere

The opening comments highlight that Commission adoption of the Proposal would prejudge a number of issues that are being considered elsewhere. As several commenters explain, intercarrier compensation for VoIP and other IP-enabled services are teed up in the Commission's *IP-Enabled Services* proceeding. These issues should not, as the Proposal's supporters would have it, be determined in the context of considering adoption of an interim or permanent set of regulations regarding "phantom traffic."[37] Further, while CDRs may be beneficial to some terminating carriers, the Commission should not prejudge whether carriers should be required to implement the systems to generate them and to deliver such records to downstream carriers, or whether terminating carriers should be required to accept and pay for them. This should be left, as it is now, to intercarrier agreements.

In addition, adoption of the Proposal would prematurely determine which carrier is responsible for paying intercarrier compensation to the terminating carrier if an intermediate carrier fails to pass sufficient call signaling information to allow the terminating carrier to readily

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36 *Accord* Comments of the VON Coalition at 8.

37 *Accord* Comments of Verizon at 3, 33-34; Comments of GCI at 5-6; Comments of Cavalier *et al.* at 13-14.

bill an upstream carrier (assuming such billing is otherwise proper).[38] Where this matter is not addressed through contractual arrangements, who is responsible for intercarrier compensation is being considered in this docket apart from the Proposal and should be addressed as part of a comprehensive order addressing intercarrier compensation in this proceeding, not a piecemeal order focused on the Proposal.[39]

Finally, as set forth in the Joint CLEC Commenters' initial comments, and recognized by other participants in this comment cycle, the Proposal, if adopted in isolation, would prejudge a number of issues raised by the larger Missoula Plan, such as the propriety of the proposed tandem transit charge.[40] These issues should not be considered in the context of the Proposal standing alone. Instead, the Commission should consider – and reject – the proposal *with* the Missoula Plan as a whole.

D. Uniform Compensation Rates Are Not The Solution to Any Phantom Traffic Problems That Exist

A presumption underlying several of the initial comments is that "phantom traffic" problems (to the extent they exist) would largely be eliminated if there were uniform compensation rates.[41] As the Joint CLEC Commenters demonstrated in their initial submissions on the Missoula Plan, even if this were true as a theoretical matter, there would be a number of

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38 *See, e.g.,* Comments of John Staurlakis, Inc., (where a transit carrier does not provide complete and accurate call detail records, the transit carrier should become financially responsible for the traffic and pay the highest intercarrier compensation rate).

39 The matter of responsibility of upstream carriers to pay intercarrier compensation is also being considered, to a more limited degree, in the pending Petition for Declaratory Ruling proceeding initiated by SBC (now AT&T). WC Docket No. 05-276.

40 *See* Comments of Cavalier *et al.* at 14 (explaining the impropriety of the tandem transit record charge)

41 *See* Comments of NCTA at 1; Comments of Sprint-Nextel Corporation at 2.

insurmountable problems with the regulatory mandate of uniform rates, both legal and policy wise.[42] These concerns need not be reiterated here but are incorporated by reference. As the Joint CLEC Commenters showed, the majority of remaining intercarrier compensation problems that might still exist as a result of arbitrage can and should be resolved through a strengthening of the call signaling rules and addressing the status, on a *prospective basis*, of VoIP and other IP-enabled traffic exchanged by carriers. Nothing in the record, apart from the bald assertions of the proponents of the Missoula Plan and the instant Proposal, suggests convincingly otherwise. To the extent such measures are adopted by the Commission as advocated by the Joint CLEC Commenters, and after a reasonable period of time, arbitrage concerns remain, the Commission should address them in a targeted fashion avoiding the smothering blanket of costly regulation advocated by the supporters of the Plan and Proposal.

E. Tariffs Should Not Be Used in the Absence of Voluntary Agreement Regarding Non-Access Traffic That Lacks CPN and Other Originating Line Information

As described above, a number of commenters support the encouragement of negotiated agreements as a principal mechanism to address "phantom traffic" rather than adoption of the Proposal. At least one of those sets of comments suggests that the Commission also allow tariffs to be used in the absence of voluntary agreements to govern compensation for non-access traffic without CPN and other mandatory originating signaling information.[43] The Joint CLEC Commenters disagree. Tariffs would create the potential for unilateral imposition of unfavorable terms and conditions, as well as frequent changes thereto. This approach could be especially

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42 Comments of Joint CLEC Commenters on the Missoula Plan, *passim*. (filed Oct. 25, 2006). Moreover, as the record in this docket makes abundantly clear, the Missoula Plan would fail miserably in bringing uniformity to intercarrier compensation rates.

43 *See* Comments of Cavalier, *et al.*, at 26. Notably, Cavalier professes a preference for voluntary arrangements. *Id.* at 25-26.

burdensome for carriers that exchange only moderate volumes of traffic with the tariffing carrier, such that the two carriers are unlikely to go to the trouble and expense of even commencing negotiations for a traffic exchange and intercarrier compensation agreement. Agreements, in contrast with tariffs, would provide much greater stability and certainty where the volume of traffic merits explicit intercarrier arrangements and not require constant monitoring of tariff transmittals. If the Joint CLEC Commenters' proposals for the negotiation of agreements and arbitration by State commissions, when necessary, are adopted, then a carrier would not be able to evade the adoption of terms and conditions for traffic exchange and intercarrier compensation. The use of tariffs to govern the exchange of non-access traffic delivered without CPN should not be permitted.

CONCLUSION

For the foregoing reasons, and those in the Joint CLEC Commenters' initial comments, the Proposal should be rejected. In lieu of the regulatory framework the Proposal would make mandatory, the Commission should adopt a process framework based on negotiations, braced by strengthened and clarified call signaling rules. The Commission should also expeditiously address the matter of intercarrier compensation for VoIP traffic in the *IP-Enabled Services* rulemaking.

Respectfully submitted,

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